

WILLIAM G. LANGFORD.

MAY 23, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUTLER, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 2715.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2715) to restore to William G. Langford the possession of a tract of land in Idaho Territory, having carefully examined the question presented by the papers and memorial, beg leave to report the following

STATEMENT OF FACTS.

In November, 1836, Rev. H. H. Spalding and his wife, being sent out by the American Board of Commissioners for Foreign Missions, a religious corporation, proceeded by an overland journey across the continent of great hardship, suffering, and peril, came to Lapwai Creek, in the Territory of Idaho, and established their home and mission in the Lapwai Valley, about two and one-half miles from Clearwater River, and occupied the land the possession of which is provided for by this bill.

This portion of the public domain was then the wildest Indian territory, occupied by wholly uncivilized Indians, who lived by hunting and fishing, and of the tribe known as the Nez Percés. The Indians, being of a peaceable disposition, received the missionaries with kindness, and set apart a portion of their land for their use. Mr. Spalding built him a house near the Lapwai Creek, and commenced, with his wife, the discharge of their duties, instructing the savages in the Christian religion, in reading and writing in the native language of the tribe, in the arts of civilization, and especially in the arts of agriculture, for eleven years, until the fall of 1847.

The missionaries, with their colaborers, had planted orchards and gardens, and cultivated fields, erected mills, a school-house, boarding-houses, a printing-office, a store-house, and barns, and had begun the erection of a stone chapel.

The missionaries had taken with them some twelve or fifteen cattle, as many horses, seeds of fruit trees and grain for planting, and the success of their teaching was so great, and the improvement of the Indians so rapid, under the teachings of Mr. Spalding and his wife and the assistance that had come to them, that they had numerous herds of cattle, and sheep, and horses, and crops of wheat amounting to some 25,000 bushels per annum. A Christian church had been formed, numbering nearly one hundred Indian communicants, and a school established in which pupils of all ages, numbering from one to five hundred, attended. The language of the tribe had been brought into a written language, and a printing-press had been set up, which was a gift from the native

church of the Sandwich Islands, on which had been printed the laws of the tribe, a small book of hymns used in their worship by the Indians, and a translation of the gospel of Matthew.

During these eleven years the Nes Percés had never been at war with the Americans; no outrages upon frontiers had ever been committed by them, and they were rapidly approaching a state of civilization which would have rendered unnecessary many hundreds of thousands of dollars which have since been spent by the United States in putting down Indian wars.

But a conspiracy was formed against the whites by other tribes of Indians, which resulted in an outbreak at a missionary station established by Dr. Marcus Whitman, one hundred and twenty miles from Lapwai, the first result of which was the murder of Dr. Whitman and his wife and eleven other persons, and the capture and dispersion of some fifty others who were at the station. Dr. Spalding, being at that time on his way to visit Dr. Whitman, hearing of the slaughter and being warned that he would share his fate, returned home, pursued by the hostile Indians, and after a six days' march through the wilderness he returned to his wife and family. The Nez Percés were still friendly and resorted to no acts of violence, but protected and guarded Mr. Spalding and family, who, fearful lest they should be drawn into the conspiracy, made preparation to leave, but he and his people were held by the Nez Percés as prisoners, who would not allow any harm to be done, and their lives were held as security to prevent retaliation upon the Indians by the Americans for the slaughter.

Meanwhile Governor Ogden, of the Hudson's Bay Company, learning the state of facts, called the Indians together and persuaded them to allow Mr. Spalding and his companions to go into Canada. The hostile Indians, having consented, let Mr. Spalding and his company, accompanied by an escort of fifty Nez Percés Indians, go to Fort Vancouver, where they arrived on the 8th of January, 1848.

It clearly appears that Mr. Spalding was thus forced from his missionary home, and left it with the full intention of returning, and promised the Nez Percé tribe that as soon as peace was restored he would return.

The first time he attempted to return was in 1848, but he was prevented by Governor Abernethy's order, which was published officially in the *Spectator*, a newspaper published in Oregon City, and was personally served on Mr. Spalding. This order closed the country against the missionaries until the spring of 1859. In that spring Mr. Spalding, learning that the country was open by the ratification of the Stevens and Palmer treaty of 1859, returned to resume his possession and re-establish his mission.

The following is a copy of the order:

FORT WASCOPUM, June 15, 1848.

REVD. MESSIEURS: As superintendent of Indian affairs, it becomes my duty to inform you, with all due respect to your sacred calling, that it is desirable that no further missionary efforts should be made with any Indians east of the Cascade Mountains until the presence of well organized and disciplined troops, under command of United States officers, shall render such efforts safe and judicious. At present the relations between the whites and Indians are too precarious to allow missionary labors with the Indians to be either prudent or effective of good. So soon as circumstances will allow, I shall take much pleasure in throwing wide the door of missionary labors amongst the natives to all Christian missionaries. At present, prudence demands that it should be closed against all.

With much respect, I have the honor to be, messieurs, your obt. servant,

H. A. G. LEE,

Superintendent of Indian Affairs.

To Messieurs BLANCHETTE.

When, in 1859, he did return and undertake to get possession of his mission, he was prevented by the Indian agent, Mr. A. J. Cain, who had occupied it, and who, in his testimony, swears as follows:

I have no personal knowledge of the abandonment; my knowledge of Indian affairs, from being connected with the Indian service from 1855 to 1861, and common report amongst both whites and Indians, satisfies my mind that he [H. H. Spalding] was compelled to leave the Nez Percé country, and as late as the year 1859 I, of my own knowledge, know that it was unsafe for Mr. Spalding to attempt to occupy the mission claim, which he desired to do.

Mr. Spalding visited me at Walla Walla Valley in the year 1859, explaining to me that he desired to return and occupy this mission claim. I informed him it would be unsafe for him to do so, in view of the then existing state of feeling amongst the Indians; that influential men amongst and of the Nez Percé tribe were claiming this mission claim as their own property, having appropriated it to themselves, and objected to its being occupied by any white man. In view of their rights, as they understood them, I objected myself, as Indian agent, to the occupation of this land as a missionary station until I was officially notified that the rights of the missionary board were recognized by the government (this land being included in the Indian reservation) and a more satisfactory state of feeling secured among the Indians themselves.

In the year 1862 the Rev. Mr. Eells showed me a power of attorney to him from the American Board of Missions, authorizing him to look after the mission claims known in this country as the Lapwai mission claim. The Lapwai mission claim not being excepted in the reservation of lands for the Nez Percé Indians, I informed him that without instructions from my superior officer I could make no official recognition of the claims of the missionary board to the lands in question.

These lands were originally occupied by a license from the Indian Department and the Secretary of War. The order was as follows:

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
March 2, 1836.

SIR: At the request of the Rev. Mr. Green, of Boston, I inclose to you a permit for yourself and Doctor Marcus Whitman to reside in the Indian country among the Flatheads and Nez Percés Indians.

Very respectfully, your humble servant,

ELBERT HERRING.

REV. HENRY H. SPALDING,
Saint Louis, Missouri.

The American Board of Foreign Missions have apprised the department that they have appointed Doctor Marcus Whitman and Rev. Henry H. Spalding, both of the State of New York, to be missionaries and teachers to reside in the Indian country among the Flathead and Nez Percés Indians.

Approving the design of the board, these gentlemen are permitted to reside in the country indicated, and I recommend them to the officers of the Army of the United States, to the Indian agents, and to the citizens generally, and request for them such attention and aid as will facilitate the accomplishment of their objects and protection, should circumstances require it.

Given under my hand and the seal of the War Department this first day of March 1836.

[SEAL OF WAR DEPT.]

LEW. CASS.

It would seem that eleven years' possession, the assent of the Indians, and the license of the United States, would have secured the right of property, but the title of the petitioner does not depend upon that.

On the 14th of August, 1848, within a few months after the missionaries had been driven out, an act was passed organizing a Territorial government in Oregon, the first section of which had the following proviso:

Provided, also, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, and the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong.

It will be observed that the words of the act say *now occupied as missionary stations among the Indian tribes*. The fact that the occupants

were driven out by hostile Indians in war with the United States, clearly leaves the occupation, in contemplation of law, in the missionaries who had been driven out, and were then awaiting, near at hand, to return. If it were otherwise, the proviso of the act of Congress would seem to be useless, because the war had driven the missionaries substantially out of all the missionary stations. But the case is relieved from doubt upon that point, because, on the 2d day of March, 1853, the act organizing the Territorial government for the Territory of Washington, which includes the *locus de quo*, contained the following proviso to the first section :

That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, *or that may have been so occupied as missionary stations prior to the passage of the act* establishing the Territorial government of Oregon, with the improvements thereon, be, and the same is hereby, confirmed to the several religious societies to which said missionary stations severally belong.

It will have been observed that Mr. Spalding was desirous of returning to his mission from prior to the passage of the act organizing the Territorial government down to 1859 ; and that he was always himself ready to take the risk of so doing, but was prevented by the proclamation of the governor and the action of Indian Agent Cain, who at that time occupied the mission-houses for the use of his family and himself, as appears from the deposition of Cain, above mentioned. In 1862 Mr. Spalding, having been appointed superintendent of instruction to the Nez Percé Indians, had arrived at the Lapwai agency. How he was received is well described in a letter from J. W. Anderson, Indian agent, in the words following :

LEWISTON, February 22, 1865.

SIR : I was United States Indian agent in charge of the Nez Percé Nation, Idaho Territory, when the Rev. H. H. Spalding, who had been appointed superintendent of instruction for Nez Percé Indians by Superintendent Hale, arrived at the Lapwai agency in the fall of 1862. At the time of his arrival a great part of the tribe was collected at the agency, and I must say they seemed highly delighted at seeing Mr. Spalding again. They seemed much pleased at the idea of having a school started among them and of having a minister who could preach to them in their own language.

Every Sabbath the Indians in great numbers attended Mr. Spalding's preaching, and I was greatly astonished at the orderly and dignified deportment of the congregation. Although Mr. Spalding had been absent from the tribe many years, yet they retained all the forms of worship that he had taught them. Many of them have prayers night and morning in their lodges. The Nez Percés have always maintained friendly relations with the Americans. This is, no doubt, in a great measure to be attributed to the influence and teachings of Mr. Spalding. In my opinion, Mr. Spalding, by his own personal labors, has accomplished more good in this tribe than all the money expended by government has been able to effect. Not having any suitable school-house, I permitted Mr. Spalding to open his school in my office shortly after his arrival, and from that time till he was compelled to discontinue the school from severe sickness, the office was crowded not only with children, but with old men and women, some compelled to use glasses to assist their sight. Some of the old men would remain till bedtime engaged in transcribing into their language portions of Scripture translated by Mr. Spalding. The desire I have to correct any false impression that may have gone abroad with regard to the reception of Mr. Spalding by the tribe on his return to the Lapwai in the fall of 1862, is the only apology I will offer for troubling you with this communication.

I remain, very respectfully, your obedient servant,

J. W. ANDERSON.

S. H. ATKINS, D. D.

The possession of Cain was maintained by other Indian agents, and the American Board of Commissioners for Foreign Missions, finding that they were not able by any peaceful means to get possession of the land, brought an action for the land in question against James O'Neil, United States Indian agent, then holding possession of the same as such

public officer, which action was duly entered in the district court for the first judicial district of the Territory of Idaho.

The United States district attorney appeared and filed a demurrer to the jurisdiction of the court. This demurrer was fully argued and heard before the court and overruled April, 1868, and the defendant was given time until October 7, 1869, in which to answer the declaration. No answer was ever filed, and on the 20th day of December, 1871, William G. Langford, the petitioner, who had purchased said land, and who had been substituted as plaintiff in said proceedings, as might be done under the Territorial law, took judgment. No appeal was taken by the United States or any one in its behalf, and no defense was made to the suit on the merits, but the records of the Indian Office will show, as your committee are informed, that the United States paid the costs of the defense. The plaintiff took a judgment in ejectment against Newell, a defendant in the suit by substitution, who was the successor of James O'Neil as Indian agent. Meanwhile Newell was turned out and another Indian agent, clothed with the authority of the United States, succeeded in possession, under instructions of the Indian Bureau, who still holds it as against the one whom we believe to be the lawful owner.

Langford took his writ *habere possessionem*, and was given possession thereunder of the land in question by the sheriff of Idaho County, who ejected the Indian agent, one Monteith, therefrom. Monteith thereupon, as Indian agent, took a lease of the premises from Langford, promising to pay rent, and was restored to possession as the tenant of Langford, the petitioner, November 13, 1874, but afterwards, refusing to pay rent, he was again ejected upon an *alias* writ on the 10th of February, 1875; and, thereupon, being ejected, the following occurred, as related by Monteith:

When the sheriff put me off I asked him if I would be allowed to come back to my meals. He thought a moment and said he had nothing to do but put me off; that he had no orders to keep me off.

I then informed him that I would return. I don't see that I am bound to remain ejected unless they order me to keep off the claim.

On the 6th of February, Monteith had asked the commanding officer at Fort Lapwai for a detachment of troops, under an officer, to place him in possession of his office, one of the buildings on the property, and keep him in possession. That demand was refused, as he says, but the further execution of the writ was prevented by troops. Thereafterwards Langford brought his action for forcible entry and detainer against his tenant, the Indian agent, and employés of the United States, obtained a judgment of the court in his favor, which judgment he proceeded to execute, but on the 14th of June, 1875, Monteith reports that—

On the 11th instant orders were received by the commanding officer at Fort Lapwai, to eject Mr. Langford's agent and place me in full possession of all agency buildings and grounds. In obedience to the same, a detachment, under command of Lieutenant Force, was sent to the agency, arriving here about 2 o'clock p. m. Lieutenant Force demanded the keys to the mills, church, and other buildings that Langford claimed to be in possession of, but the demand was not complied with. Thereupon Lieutenant Force ordered the keys to be taken from said agent and placed in my possession, which was done, and Mr. Langford's agent, with his baggage, was immediately removed from the reserve.

Meanwhile the petitioner had brought a suit before the Court of Claims for rent, which has been appealed to the Supreme Court of the United States, and is now pending.

The petitioner in his memorial declares that he is ready and willing to sell the land to the United States, if it is absolutely necessary for them to have it, at a fair price. He fixes the price at \$40,000, or is will-

ing that it should be appraised at its true value by any disinterested parties under the provisions of an act of Congress.

Your committee have endeavored to state the facts as succinctly as the history of so long a period or lapse of time, and the many acts which are necessary to advert to for a full understanding of the matter, will permit. But the whole transaction, in the judgment of your committee, resolves itself into the following:

By a permission issued from the War Department, in 1836, the missionary agents of the American Board of Commissioners for Foreign Missions were permitted to occupy these lands, and make a home there for the purpose of instructing the Indians. They continued in such occupation until they were driven off by hostile Indians; not those instructed, civilized, and Christianized by their teachings, who, on the contrary, guarded them carefully to a place of safety.

The missionaries having made several attempts to return, and being prevented by the order of the Indian Bureau, as soon as they were permitted did return, and attempted to get possession of their home, houses, property, mills, gardens, fields, and church; but these were found to be the comfortable quarters of the Indian agent, who opposed and prevented the return of these religious men and women, who were thus kept out of the property, and the mission again broken up by men equally savage as their former assailants, though of the white race.

Two several acts of Congress having been passed in their favor, confirming the title of these lands in them, the opinions of two Attorneys-General, of different political faith—Hon. Jeremiah S. Black (9 Opinions, 339), and Hon. Edward Bates (May 4, 1864)—having determined their title to be valid, brought suit in a proper court against an officer of the United States, who pretended to make claim to the property in behalf of the United States. They sued for possession, which suit was defended by the district attorney of the United States at the cost of the United States, and such proceedings were had that a judgment was entered in a proper court, having full jurisdiction, against the United States and its officer in favor of the petitioner. After various negotiations and waiting for a long time, this judgment was not appealed from, and cannot now be reversed or changed or set at naught. After waiting a very considerable time, and after sundry negotiations, finding it impossible otherwise to get possession of the land, the petitioner sued out a writ of *habere possessionem* and ejected the Indian agents and employés of the United States then in possession by means of the sheriff of the proper county, acting under the writ. Unwilling to embarrass the government, on the same day the petitioner executed a lease for a nominal rent to the several employés and agents of the government, who, thereafter, in breach of their legal obligations as tenants, and in breach of good faith toward one who had put them in possession of land which had been adjudicated to him by the courts, the Indian agent and his employés under his instructions, declined to pay the rent or give up possession, but called upon the military arm of the government to send its officers and soldiers there, who forcibly ejected the plaintiff's agent from the premises, took the keys of the church and other buildings from him, and restored the possession to the Indian agent.

Your committee cannot understand how such a transaction as this could well be done under a government of laws. In time of peace the government can no more rightfully forcibly take possession of land by means of its soldiers than can a mob do the same thing and claim any title thereby. Without stopping to use such terms of characterization of these proceedings as might rush to the lips of just-minded men, your

committee are clearly of the opinion that it is the duty of the Congress of the United States to pass such an act as will give force and effect to the adjudication of the courts in favor of the petitioner, which adjudication seems to your committee to be in accordance with the right, leaving the government, if they desire the land, to acquire it by due proceedings under the provisions of the Constitution, which allows no man's property to be taken without compensation being made therefor.

Your committee, therefore, recommend the passage of the accompanying bill.

O